

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Order entered: 3/14/2007

**SECOND ORDER RE: ENERGY EFFICIENCY CHARGE EXEMPTION MECHANISM**

**I. INTRODUCTION**

The Energy Efficiency Charge ("EEC") is a volumetric charge that is assessed on electric bills throughout Vermont. The funds collected via the EEC support cost-effective energy efficiency services delivered by Vermont's Energy Efficiency Utility ("EEU").<sup>1</sup> In 2005, new legislation required the Public Service Board ("Board") to establish a mechanism under which customers could apply for an exemption from paying some or all of the EEC amounts that they would otherwise owe.

The Board's January 8, 2007, Order established the broad outlines of an EEC exemption mechanism and created a Working Group to provide recommendations to the Board on certain technical issues related to the mechanism. That Order also provided an opportunity for workshop participants to comment on two issues — the definition of "extraordinary costs" and the establishment of EEC exemptions on a calendar-year basis.

Today's Order rules on those two issues and clarifies the relationship between the EEU annual budget and any EEC exemptions that may be granted. (This issue was implicitly addressed in the January Order.) In addition, today's Order requests comments from workshop participants on an issue raised by the Working Group, and requires affected entities to track costs associated with implementation of the EEC exemption mechanism.

**II. DISCUSSION AND CONCLUSIONS**

**Defining "Extraordinary Costs"**

30 V.S.A. §209(d)(4) requires the Board to establish criteria by which customer applications for an EEC exemption will be measured. It also specifies that the Board may authorize an exemption only if a customer demonstrates that it met one of two conditions during the preceding year — (1) that the customer implemented an extraordinary amount of cost-

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1. Efficiency Vermont delivers the EEU's services throughout most of the State. The City of Burlington Electric Department ("BED") delivers most of the EEU's services in BED's service territory.

effective energy efficiency at the customer's own expense; or (2) the customer incurred "extraordinary costs" on energy efficiency measures and the customer did not and will not receive reimbursement for those measures from the EEU.

In its January 8, 2007, Order, the Board stated that it was considering a formula that defines "extraordinary costs" (for the purpose of determining whether a customer met the condition required by statute) as five times a customer's annual EEC payments for the most recent complete calendar year, and at least \$300.<sup>2</sup> The Board provided all workshop participants with an opportunity to comment on this proposed formula for "extraordinary costs."

On January 26, 2007, and again on February 7, 2007, the Vermont Department of Public Service ("DPS") filed comments on the Board's proposed formula. In both filings, the DPS recommended that the Board define "extraordinary costs" as ten times a customer's annual EEC payments for the most recent complete calendar year, and at least \$1,000. In making this recommendation, the DPS argued that the Board's proposed threshold was too low because approximately 43 percent of the commercial and industrial participants in Efficiency Vermont's 2005 initiatives implemented measures costing at least five times the customers' estimated EEC payments. According to the DPS, if 43 percent of customers meet a particular threshold, that threshold is not extraordinary.

The DPS stated that it is concerned that the costs of designing and implementing the exemption mechanism will be significant, and that the benefits of the mechanism are unknown. The DPS explained that its proposal is designed to ensure that only those customers most likely to deliver a substantial amount of energy efficiency that will benefit all Vermont electric ratepayers will qualify for an exemption. The DPS added that, based on analysis performed by Efficiency Vermont, it appears that approximately 1,400 electric ratepayers currently make annual EEC payments of \$1,000 or more.<sup>3</sup>

No other party filed comments on this issue.

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2. Order of 1/8/07 at 10.

3. According to the DPS, Efficiency Vermont's analysis did not include BED customers or customers of some small electric utilities.

We are persuaded by the DPS's arguments that an analysis of historical information about the cost of installed measures compared to customers' annual EEC payments indicates that our proposed definition of "extraordinary costs" should be revised so that it more accurately reflects the Legislature's intent. In addition, we recognize the DPS's concerns that implementation of an EEC exemption mechanism will require significant resources whose costs may well outweigh the benefits. In light of these considerations, we conclude that the DPS's proposed formula for defining extraordinary costs is reasonable, and we hereby adopt it.

#### Establishing Exemptions on a Calendar-Year Basis

In our January 8, 2007, Order, we raised the following timing concern with the current statute:

The statute requires that, in order to receive an EEC exemption, a customer must acquire an extraordinary amount of energy efficiency or incur extraordinary costs on energy efficiency "during the preceding year." However, the annual EEC rates apply to service after January 1, and are calculated in the fall of the prior year. In order to accurately calculate the EEC rates for the following year, the Board would need to know what customers, if any, would be exempt from paying some or all of the EEC in that year. Thus, the problem is that customers could be implementing energy efficiency through December that would qualify to support an EEC exemption for the following year, but the EEC rates would have already been calculated by that time.<sup>4</sup>

We provided workshop participants with an opportunity to comment on our preliminary conclusion that it is preferable to establish EEC exemptions on a calendar-year basis, even if that requires statutory modifications.

The DPS was the only workshop participant to file comments. The DPS, in its January 26, 2007, filing, recommended that an EEC exemption be based on a calendar year. The DPS did raise the question of whether the eligible EEC payments should be for bills rendered February to February (which corresponds to calendar-year usage and is how the EEU annual budget is collected) or for the actual calendar-year payments. The DPS suggested that this issue should be addressed as the exemption qualification process is developed.

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4. Order of 1/8/07 at 13-14 (footnote omitted).

The DPS also stated that it does not believe statutory modification is needed for the Board to establish the EEC exemption on a calendar-year basis. The DPS asserted that phrase "during the preceding year" should be read to mean the year preceding the Board's authorization of the exemption, rather than the year preceding the year in which the customer is exempt.

After considering the DPS's comments, we conclude that it is appropriate for EEC exemptions to be established on a calendar-year basis — with the exemption based on the calendar year that precedes the Board's authorization of the exemption<sup>5</sup> — and that the current statute allows us to do so. We ask the Working Group to make a recommendation to us regarding whether the EEC exemption should apply to bills rendered February to February or to a customer's actual calendar year payments.

#### Clarification of Relationship Between EEC Exemptions and EEU Budget

The attendees at the EEC Exemption Mechanism Working Group's first meeting briefly discussed the relationship between any EEC exemptions that may be granted and the EEU's overall budget. The issue is whether the EEU's budget is independent of any EEC exemptions (that is, whether EEC rates will be set to collect the entire budget from the customers still required to pay the EEC), or whether the granting of any EEC exemptions will reduce the EEU's budget by the amount of the exemptions. Some of the working group members believed that the Board addressed this issue in its January 8, 2007, Order, while others did not realize that it had been addressed. Accordingly, the attendees recommended that the Board clarify whether it intended to resolve this issue in its January 8, 2007, Order.

While we did not expressly address this issue in our January 8, 2007, Order, we did implicitly address it in our discussion regarding our timing concern with the current statute. In that discussion, we explained the need to know what customers, if any, would be exempt from paying some or all of the EEC in that year prior to setting the EEC rates for that year. We also

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5. For example, a Board determination made in September, 2008, to exempt a customer from EEC payments in 2009 would be based on the customer's energy-efficiency efforts in calendar-year 2007.

discussed drawbacks to "disconnecting" the determination of EEC exemptions from the development of annual EEC rates, including:

if a significant number of kWh and kW are exempt from paying the charge, it is possible that insufficient funds will be collected via the EEC. . . if the undercollections are large enough, this could cause cash flow problems for the EEU Fund.<sup>6</sup>

In other words, we implied that the EEU annual budget is not affected by the granting of any EEC exemptions.

In response to the Working Group's request for clarification, we expressly state that the granting of any EEC exemptions will not change the EEU's annual budget. We conducted a comprehensive process and balanced many statutory objectives to determine an appropriate annual budget for the EEU for 2008. We do not intend to revisit this decision as a result of any individual customers receiving an EEC exemption.

We do recognize the possibility that if a significant number of customers, or if enough large customers, receive an EEC exemption, there could be rate impacts on other customers. We are pleased that the Working Group has decided to consider what those rate impacts might be, and what steps could (or should) be taken to minimize any such rate impacts. We will consider any such recommendations regarding this issue when we receive them.

#### Request for Comments from Workshop Participants

At the Working Group's first meeting, one member asked whether the exemption mechanism could be designed such that a qualifying customer receives a rebate of EEC contributions from the EEU Fiscal Agent, rather than requiring utilities to modify their billing systems so that qualifying customers are billed only 30 percent of the EEC charges that they otherwise would have been billed. The Working Group discussed whether such a rebate could be considered an "exemption" as provided for in the statute, as well as whether, if it could be considered an exemption, it would be desirable to use a rebate approach. The Working Group stated that it would be helpful for the Board to clarify this issue.

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6. Order of 1/8/07 at 14.

We have never considered whether a rebate constitutes an exemption, and therefore would like to provide workshop participants with an opportunity to comment on this issue before resolving it. We are particularly interested in whether such a rebate mechanism would comply with the requirement in 30 V.S.A. § 209(d)(4) that the Board design an "exemption mechanism" and, if it does, what the advantages and disadvantages would be of using such an approach. Any participant wishing to comment on this issue should do so on or before March 30, 2007.

#### Tracking Costs Associated with Implementation

At the EEC Exemption Mechanism Working Group's first meeting, there was discussion about the costs associated with implementing an exemption mechanism. It was suggested that it would be helpful for entities involved with implementing the mechanism to keep track of their costs associated with the implementation. We concur. Accordingly, we require Vermont electric distribution utilities, Efficiency Vermont and the Contract Administrator to track their costs associated with the exemption mechanism. We will track our costs associated with implementing the exemption mechanism, and we ask the DPS to do the same.

### **III. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. With respect to the Energy Efficiency Charge ("EEC") exemption mechanism, the term "extraordinary costs" referred to in 30 V.S.A. § 209(d)(4) shall be defined as ten times a customer's annual EEC payments for the most recent complete calendar year, and at least \$1,000.
2. EEC exemptions shall be established on a calendar-year basis.
3. The Working Group created by the Board's January 8, 2007, Order is requested to provide a recommendation to the Board regarding whether the EEC exemption should apply to bills rendered February to February (which corresponds to calendar-year usage and the collection of the Energy Efficiency Utility's ("EEU") annual budget) or to a customer's actual calendar-year payments.

4. The granting of any EEC exemptions shall not change the previously-approved EEU budget for the following year.

5. Any participant that would like to comment on the issues raised herein regarding the use of a "rebate" mechanism as the statutorily-required exemption mechanism shall do so on or before March 30, 2007.

6. All affected Vermont electric distribution utilities, Efficiency Vermont and the EEU Contract Administrator shall track their costs associated with implementing an EEC exemption mechanism. The Vermont Department of Public Service is requested to do the same.

Dated at Montpelier, Vermont, this 14<sup>th</sup> day of March, 2007.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: March 14, 2007

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*